

Prenuptial Agreements

Results achieved in prior matters are not meant to be a guarantee of success as the facts and legal circumstances vary from matter to matter.

A prenuptial agreement, also referred to as a pre-marital agreement or ante-nuptial agreement, is an agreement signed prior to a marriage, which sets forth the parties' rights upon divorce and/or death. Prenuptial agreements are governed by the Uniform Premarital Agreement Act, N.J.S.A. 37:2-31 *et seq.*

A prenuptial agreement may address the following issues:

- The rights and obligations of each of the parties in any of the property of either or both of them whenever and wherever acquired or located.
- The right to buy, sell, use, transfer, exchange, abandon, lease, consume, expend, assign, create a security interest in, mortgage, encumber, dispose of, or otherwise manage and control property.
- The disposition of property upon separation, marital dissolution, dissolution of a civil union, death, or the occurrence or nonoccurrence of any other event.
- The modification or elimination of spousal or one partner in a civil union couple support.
- The making of a will, trust, or other arrangement to carry out the provisions of the agreement.
- The ownership rights in and disposition of the death benefit from a life insurance policy.
- The choice of law governing the construction of the agreement.
- Any other matter, including their personal rights and obligations, not in violation of public policy.

The statute prohibits a prenuptial agreement from adversely affecting the right of a child to child support. If a party seeks to set aside a prenuptial agreement upon divorce or death of the other party, that party must prove, by clear and convincing evidence, that the agreement was executed involuntarily. In addition, the party must prove that the agreement was unconscionable when it was executed because that party, before execution of the agreement:

- Was not provided full and fair disclosure of the earnings, property, and financial obligations of the other party.
- Did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided.
- Did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the other party.
- Did not consult with independent legal counsel and did not voluntarily and expressly waive, in writing, the opportunity to consult with independent legal counsel.

It is imperative that the prenuptial agreement contain a full disclosure of each party's assets and income and any other information that would bear upon the ability of each party to conclude that the agreement is fair. It is also critical that each party is represented by counsel when entering into a prenuptial agreement. A prenuptial agreement is a document that should be drafted with care and adequate time for both parties to ensure that the agreement will be enforced as intended.

To speak with an attorney about a prenuptial agreement, please contact our office.

To speak with an attorney about your legal options, please call: 732-352-9871.